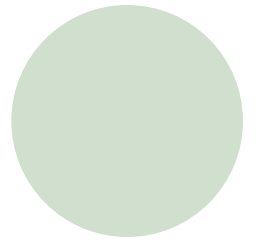
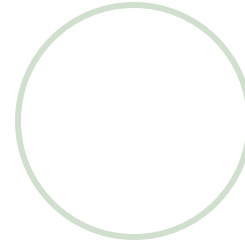
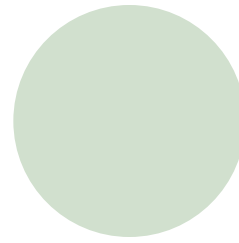
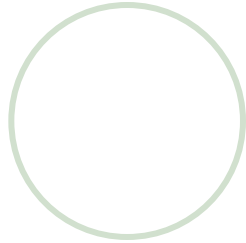
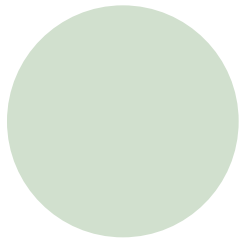


Financial Identity Fraud and Identity Theft Protection Act



Carri Grube Lybarker
Staff Attorney, SCDCA



This presentation is not meant to serve as a substitute for reading the Act, seeking legal counsel or otherwise requesting Department guidance and/or interpretations. The presentation merely serves as an introduction to the Act.

Roadmap

- SCDCA Overview
- ID Theft Background
- FIFITPA



Department Overview

- Consumer Services & Education
- Public Information
- Consumer Advocate
- Administration
- Legal Division



UP NEXT: ID Theft Background

What is Identity Theft?

- Unlawful use of your personal information
- Every 15 minutes, 200 people become victims of Identity Theft
- **FTC= \$50 billion losses annually**
- **SC Stats: 2007- 30th**
 - **(2006- 32nd ; 2005- 36th)**





Identity Theft Consumer Complaint Data

South Carolina

January 1 - December 31, 2007



*Federal Trade Commission
Washington, DC*

Figure 4a



Identity Theft Complaints by State (Per 100,000 Population)¹

January 1 – December 31, 2007

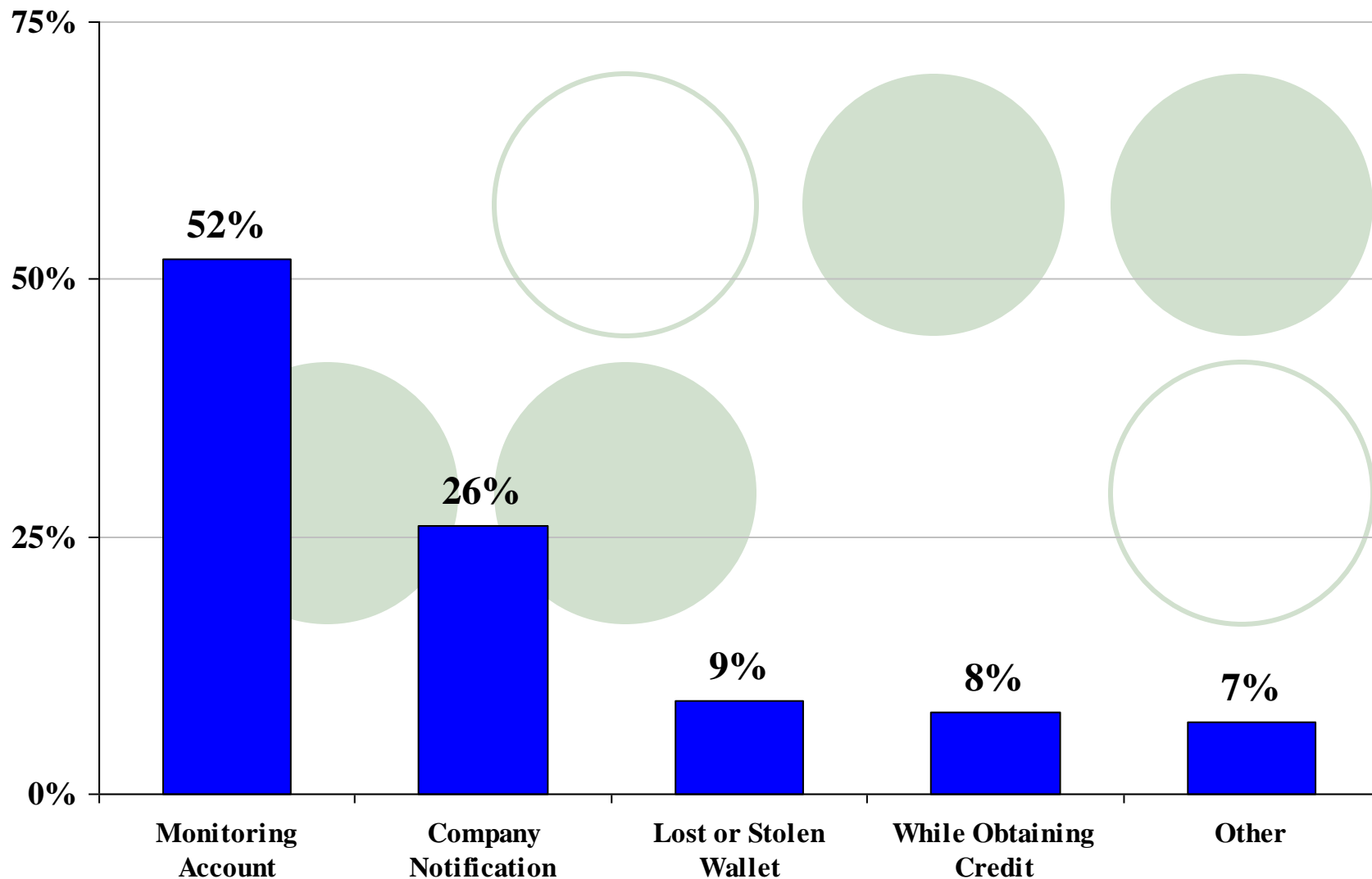
Rank	Consumer State	Complaints Per 100,000 Population	Number of Complaints	Rank	Consumer State	Complaints Per 100,000 Population	Number of Complaints
1	Arizona	137.1	8,688	26	Indiana	63.4	4,026
2	California	120.1	43,892	27	Ohio	62.6	7,178
3	Nevada	114.2	2,930	28	Louisiana	62.3	2,674
4	Texas	107.9	25,796	29	Kansas	61.0	1,694
5	Florida	105.6	19,270	30	South Carolina	60.6	2,670
6	New York	100.1	19,319	31	Utah	57.8	1,529
7	Georgia	91.6	8,744	32	Mississippi	57.3	1,673
8	Colorado	89.0	4,328	33	Arkansas	56.5	1,601
9	New Mexico	87.5	1,723	34	Rhode Island	56.0	592
10	Maryland	85.8	4,821	35	Minnesota	55.0	2,857
11	Illinois	80.2	10,304	36	Idaho	49.2	737
12	New Jersey	79.0	6,864	37	New Hampshire	48.9	643
13	Washington	76.4	4,942	38	Alaska	47.0	321
14	Pennsylvania	72.5	9,016	39	Hawaii	45.9	589
15	Michigan	70.3	7,079	40	Nebraska	44.7	793
16	Delaware	69.7	603	41	Wisconsin	43.7	2,450
17	Alabama	69.6	3,221	42	Kentucky	43.3	1,836
18	Virginia	69.0	5,319	43	Wyoming	42.5	222
19	Connecticut	68.8	2,409	44	Montana	40.8	391
20	Oregon	68.1	2,552	45	Maine	40.2	530
21	Missouri	67.4	3,962	46	West Virginia	40.2	729
22	North Carolina	67.0	6,069	47	Vermont	38.1	237
23	Massachusetts	66.5	4,292	48	Iowa	35.6	1,063
24	Tennessee	64.7	3,986	49	South Dakota	30.8	245
25	Oklahoma	63.9	2,312	50	North Dakota	28.5	182

¹These data are not based on a survey; the complaint figures presented are derived from self-reported and unverified consumer complaints contained in the FTC's database. Per 100,000 unit of population estimates are based on the 2007 U.S. Census population estimates (Table NST-EST2007-01 - Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2007). Numbers for the District of Columbia are 784 complaints and 133.2 complaints per 100,000 population.



Federal Trade Commission
September 2003

How Victims Discovered ID Theft¹



¹Source: Identity Theft Survey Report conducted by Synovate for the FTC (March-April 2003). Percentages based on respondents who indicated they had been the victim of identity theft within the past five years.

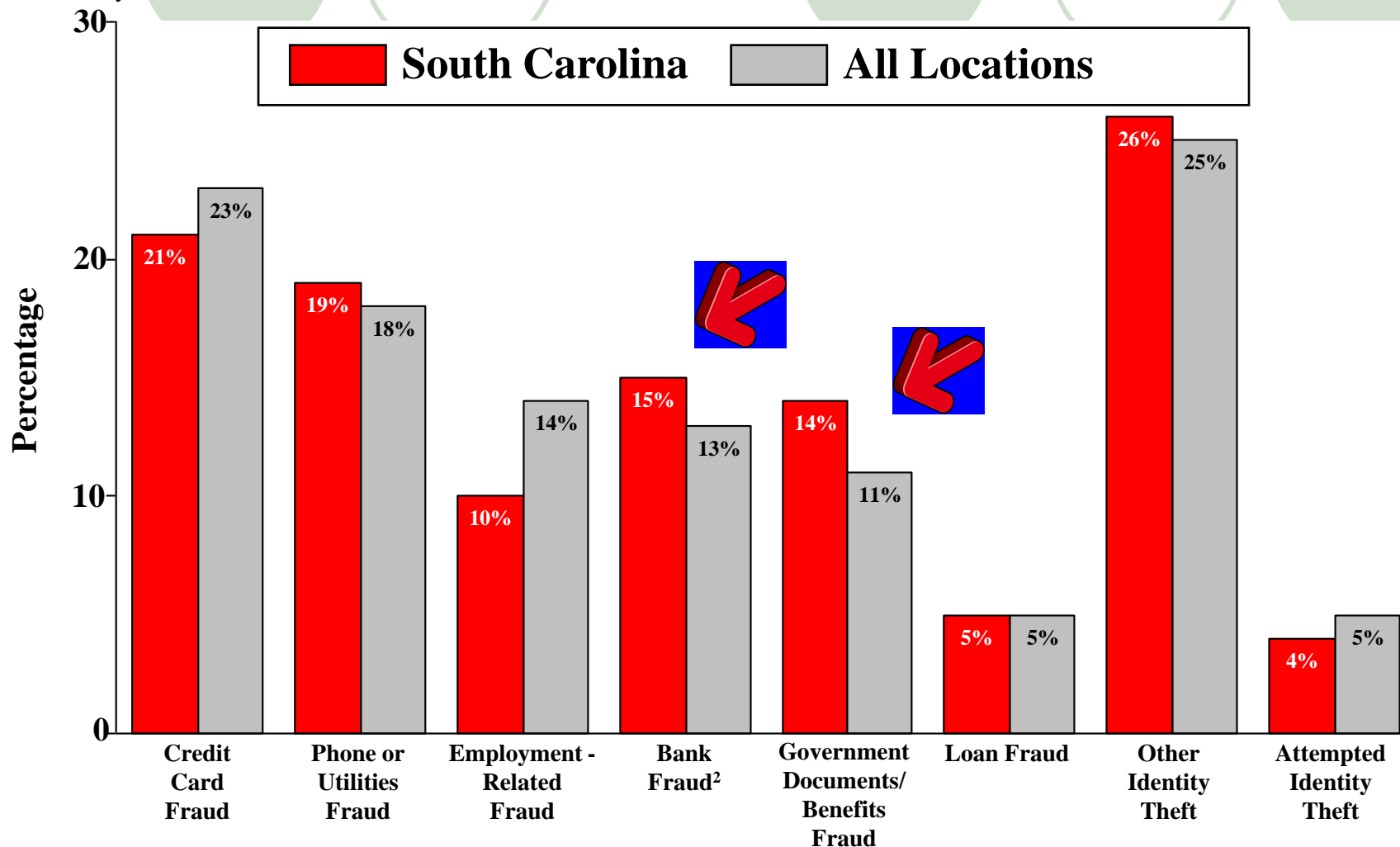
Figure 1

How Consumers' Information Is Misused¹

January 1 – December 31, 2007



IDENTITY THEFT
Data Clearinghouse



UP NEXT: FIFITPA

²Includes fraud involving checking and savings accounts and electronic fund transfers.

Financial Identity Fraud and Identity Theft Protection Act

- Legislative Background
- Social Security Numbers
- Records Disposal
- Security Breach
- Other Protections
- Consumer Id Theft Protection



Legislative Background



- Bills
- Comprehensive Result= S. 453, Act 190
- Current Status
 - *Effective dates ~ December 31, 2008 & July 1, 2009*

Social Security Numbers~ eff. 12/31/08

Section 37-2-180

- Among other prohibitions, a person may not:
 - Make available to the public a person's social security number or six or more digits of the number;
 - Intentionally print or imbed a person's social security number or six or more digits of the number on a card required for access to a product or service;
 - **Require a person to transmit a social security number or six or more digits of the number over the internet UNLESS there is a (1) secure connection or (2) the number is encrypted.**



Social Security Numbers cont...

- **Require a person to use his/her social security number or six or more digits of the *number to access the web* unless a password is also required;**
- Print a person's social security number or six or more digits of the number **on materials mailed** to that person **UNLESS *state or federal law requires*** it; -----
- Intentionally disclose a person's social security number or six or more digits of the number to a 3rd party w/o written consent of consumer **UNLESS** for legitimate bus. Purpose or permitted by law.



Social Security Numbers cont...

- **Exceptions Include:**

- SS # is included in an application. (*Still cannot be on a postcard or visible on or thru an envelope.*)
- Opening of an account or payment for a product or service authorized by the consumer.
- Person providing the SS# to a governmental authority.



Records Disposal ~Effective 12-31-2008

Section 37-20-190

○ *Important Definitions*

● *Personal Identifying Information (PII)*

- Consumer's 1st name or 1st initial
- + last name
- +unencrypted or unredacted:

Social security #, or

Driver's License #, or

Financial account #, credit card, debit card
+ security code, or

Other #s or information to get access to
financial accounts



Records Disposal cont...

- ***Business***

- Person conducting business in this State

- ***Disposal***

- discarding records that contain *personal identifying information* OR
- The sale, etc of anything containing



Records Disposal cont...

- Disposal of Records~
- **Record (Paper, electronic, etc)**
 - If PII involved, B4 disposal:



1. *Modify by:*

*shredding, erasing or using other means to make the PII **unreadable or undecipherable***

Can hire a 3rd party to dispose of records if compliant with the Act's requirements

- **EXCEPTIONS Include:**

- Bank or financial institution subject to AND in compliance with GLB Act
- Credit reporting agency subject to and in compliance with FCRA

Records Disposal cont...

- Penalties

- Civil Action

- Department

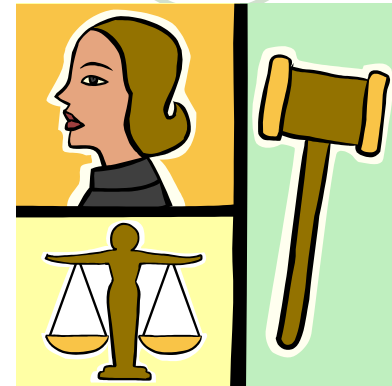
- Consumer

- 3x actual damages/ limit \$1,000 + attorneys fees
 - Injunction

- Administrative Action

- Injunctions

- Fines



Records Disposal cont...

● Federal Requirements

○ Disposal Rule (FCRA)

- Requires proper disposal of sensitive information derived from consumer reports.
- Who?
 - Any person who uses a consumer report for business purposes, ie: lenders, insurers, employers, landlords, mortgage brokers and debt collectors.
- How?
 - Burn, pulverize, shred
 - Destroy or erase electronic data
 - Due diligence in selecting and monitoring contractors.



Records Disposal cont...

● **Safeguards Rule (Gramm-Leach-Bliley Act)**

- Requires financial institutions* to develop and implement safeguards to protect customer information.
- Companies must:
 - Develop a written information security plan
 - Designate employee(s) to coordinate safeguards
 - Identify and assess risks to customer information
 - Design and implement a safeguards program (regularly monitor, test, and update it)
 - Oversee service providers

***CAUTION! The definition of "financial institution" is broad. Examples include auto dealers, mortgage brokers, realtors, tax preparers, & courier services.**

Records Disposal cont...

○ Red Flag Rule (FACTA)

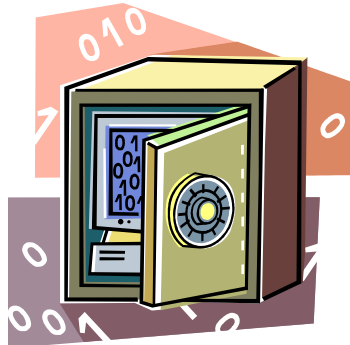
- Requires financial institutions and creditors to develop a written program that identifies and detects relevant warning signs (“**Red Flags**”) of Identity Theft.
- Who?
 - state or national bank, S & L, Credit Union that holds a deposit account or an account where the consumer makes transfers,
 - entity that regularly extends, renews, or continues credit. Includes finance companies, auto dealers, mortgage brokers, utility companies, and telecommunication companies.
- How?
 - FTC, Banking Agencies, and NCUA have published Guidelines suggesting 26 possible red flags.

Security Breach~ Effective 7/1/09

● Definitions~

○ ***Breach of the Security of the System***

- *Unauthorized access to AND*
- *Acquisition of:*
 - *Computerized data (where PII isn't encrypted, redacted, etc)*
 - *Illegal use has or is likely to occur OR*
 - *Use of the information creates a material risk of harm*



Security Breach cont...

- **Applies to:**

- Persons conducting business in this State

- *If contract out maintenance of data, 3rd party must notify owner of data when discover breach and owner must notify consumers*

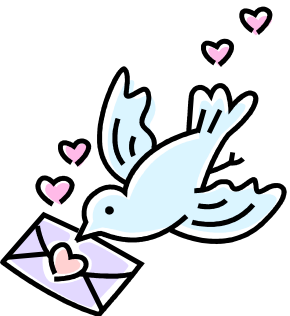
- **Notification~**

- **Must be Made:**

- **Without delay** (*unless law enforcement says may compromise*) following discovery or notification

- **BY:**

- Written notice
 - Electronic notice (if primary method)
 - Telephone notice;
 - Substitute Notice: \$250k or 500,000 persons



Security Breach cont...

Sample Security Breach Notification Letter

Date

Organization's Name and Address

Affected Person's Name and Address

Dear (Person's Name):

I am writing to inform you that our organization experienced *(or discovered)*
a security breach on or about *(date of breach or when breach was*
discovered). **Unfortunately this has resulted in unauthorized access to your**
personal identifying information, specifically your *(identify information that*
was or is reasonably believed to have been acquired).

(Organization Name) **is taking this matter very seriously and has** *(describe*
steps taken to prevent further harm or access to the person's personal
identifying information and indicate whether or not law enforcement and/
or the Department of Consumer Affairs was notified of the breach). **If you**
have any questions about this notice, please contact *(name of contact*
person) at *(contact's telephone number)*. **You may also contact the South**
Carolina Department of Consumer Affairs at 1-800-922-1594 for information
on steps you can take to defend yourself against identity theft.

Sincerely,

Security Breach cont...

- **Notification cont...~**

- **To the Department When:**

- > 1,000 persons affect @ 1 time
 - Must also notify national consumer reporting agencies

- **Notice Must Include:**

- Timing,
 - Distribution, and
 - Content of Notice



Mail To:

Legal Division

RE: Security Breach Notification

South Carolina Department of Consumer Affairs

P.O. Box 5757

Columbia, SC 29250

Security Breach cont...

● **Penalties:**

○ Private Cause of Action

- Damages,
- Injunction, and
- Attorney's fees

○ Administrative Fines

- Willful violation
- Up to \$1,000 per affected person



Financial Institutions are considered in compliance if abiding by the laws delineated in section 39-1-90(J).

Other Protections

- Unlawful to “dumpster dive”

- Misdemeanor
- Felony (intentional)

- Creates crime of “Financial identity fraud”

- Felony (intentional)

- Credit Card Receipts

- *Mirrors Federal Law*

- Business may only print 5 or less digits of a credit/debit card # on consumer's receipts
 - (doesn't apply to handheld/imprinting)



Consumer ID Theft Protection

Sections 37-20-110 et seq.

● Important Definitions

○ **Consumer**

● Individual:

- Residing in SC
- Making a transaction for personal, family or household purpose

○ **Consumer Credit Reporting Agency (CRA)**

● Person

- who for \$\$ or dues
- Regularly assembles OR Evaluates
- consumer info
- for the purpose of giving consumer reports to 3rd parties

experian

TransUnion.

EQUIFAX

Consumer ID Theft Protection cont...

● Important Definitions cont...

○ **Consumer Report**

- Any communication of information by a CRA
- Concerning a consumer's:
 - Creditworthiness,
 - Credit standing
 - Etc.
- Is used or collected to establish eligibility for:
 - Credit or
 - Insurance or
 - Employment, etc



The screenshot shows a credit report interface with a sidebar on the left containing navigation links such as 'Personal Information', 'Credit Summary', 'Credit History', 'Inquiries', 'Public Records', and 'Dispute'. The main content area displays a 'Credit Summary' for a consumer named 'William H. Brown, Jr.'. It includes a table with columns for 'Type of Account', 'Number of Accounts', and 'Total Balance & Delinquencies'. The table lists various accounts including 'Mortgage', 'Auto Loan', 'Credit Card', 'Student Loan', 'Business Loan', 'Personal Loan', 'Auto Loan', 'Credit Card', 'Student Loan', 'Business Loan', and 'Personal Loan'. The 'Total Balance & Delinquencies' column shows values like '\$10,000', '\$5,000', '\$10,000', '\$5,000', '\$10,000', '\$5,000', '\$10,000', '\$5,000', '\$10,000', and '\$5,000'.

Type of Account	Number of Accounts	Total Balance & Delinquencies
Mortgage	1	\$10,000
Auto Loan	1	\$5,000
Credit Card	1	\$10,000
Student Loan	1	\$5,000
Business Loan	1	\$10,000
Personal Loan	1	\$5,000
Auto Loan	1	\$10,000
Credit Card	1	\$5,000
Student Loan	1	\$10,000
Business Loan	1	\$5,000
Personal Loan	1	\$10,000

Consumer ID Theft Protection cont...

● Important Definitions cont...

○ **Security Freeze**

- Notice placed in a consumer credit report that prohibits the CRA from releasing a credit report, in whole or in part, without express authorization of the consumer

● Security Freeze~ *In General*

- **Freeze**- credit report cannot be accessed without consumer's permission
- Available to **ANYONE**
- Submit request to CRA
 - Certified letter or e-mail
- CRA must place within 5 days



Consumer ID Theft Protection cont...



● Security Freeze cont...

○ **Within 10 Days CRA Must:**

- Send consumer written confirmation of request and
- Provide a pin or password (thaw or lift freeze).

○ **While Freeze in Place CRA Must:**

- Notify consumer of personal info changes within 30 days
 - Ie: address, name, social security #
- Notify person requesting a report = frozen

Consumer ID Theft Protection cont...

● Security Freeze cont...

○ **To Thaw** (temporarily remove freeze)

- Request via e-mail, fax, telephone, etc.
- Can be for a specified time or creditor/ requestor
- CRA must thaw within 15 minutes

○ **To Lift**

- Request via e-mail, telephone, etc
- CRA must remove within 3 days



Consumer ID Theft Protection cont...

- Security Freeze cont...

- It is ***FREE*** to:

- Place,
 - Temporarily Lift OR
 - Remove

A Security Freeze!!!



Consumer ID Theft Protection cont...

● Creditor Requirements

- Businesses that mail offers to receive a seller or lender credit card must **verify a change of address** if the application returned states an address that is substantially different from the address on the offer.
- A seller/ lender credit card issuer is **prohibited from mailing out additional credit cards** to a new address if the card is requested within 30 days of the address change, unless the change of address is verified by the issuer.

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Fax: 803-734-4229

www.scconsumer.gov

**(FIFITPA Workshop Presentations &
Handouts)**



**www.ftc.gov for more information
on federal id theft protection laws.**